

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KENNETH DINKINS,

Plaintiff,

v.

GERALDINE SCHINZEL,

Defendant.

Case No. 2:17-cv-01089-JAD-EJY

ORDER

Before the Court is Defendant Geraldine Schinzel's Response to the Court's March 23, 2021 Order to Show Cause (ECF No. 157); Defendant's Motion for a "30-day extension to retain pro bono counsel" (ECF No. 158); and Plaintiff Kenneth Dinkin's Motion to Strike Defendant's Motion for a 30-day extension (ECF No. 160). Plaintiff filed a reply to Defendant's response to the Court's Order to Show Cause. ECF No. 159. Defendant did not file a response to Plaintiff's Motion to Strike. *See* ECF No. 161 (Plaintiff's notice of non-opposition). The Court finds as follows.

I. BACKGROUND

As stated in the Court's prior Order (ECF No. 151), this matter arises from a real estate deal between Plaintiff and Defendant that soured. After ruling on the parties' Motions for Summary Judgment (ECF No. 136), Judge Dorsey ordered the parties to participate in a settlement conference, which they did on March 8, 2019. ECF No. 138. No settlement was reached, and after the conference, Defendant stopped participating in this case. On December 12, 2019, Judge Dorsey granted Plaintiff's Motion for Default (ECF No. 145), and on September 25, 2020, she entered final default judgment in favor of Plaintiff and against Defendant in the total amount of \$43,000 (ECF No. 148). On December 3, 2020, Plaintiff filed a Motion to Compel responses to post-judgment discovery requests he served on Defendant in October 2020, but to which he received no response. ECF No. 150. The undersigned granted Plaintiff's Motion and ordered Defendant to respond to the requests no later than March 5, 2021. ECF No. 151. On March 8, 2021, Plaintiff filed a Motion for an Order to Show Cause why Defendant should not be held in contempt of court, because she did

1 not comply with the Court’s Order to respond to Plaintiff’s discovery requests. ECF No. 152. The
 2 undersigned granted that Motion and ordered Defendant to show cause why she should not be held
 3 in contempt of court. ECF No. 153.

4 On April 22, 2021, Defendant filed a response to the Court’s Order—her first appearance in
 5 this case since March 2019. ECF No. 157. She filed the same document as a Motion “for Stay for
 6 30 days to allow time to retain pro bono counsel.” ECF No. 158. Defendant states that she is not
 7 represented by counsel and has been “overwhelmed with this litigation, COVID-19, employment,
 8 family, and financial issues and did not pay attention to this legal proceeding as [she] should have.”
 9 *Id.* at 1. Defendant requests this Court’s leniency, and states that her brother-in-law has “agreed to
 10 have a member of his firm, Chapman Law Group, file a petition to be admitted to this court under
 11 LR IA 11-2 and represent me on a pro bono basis.” *Id.* at 2. Defendant requests that the Court stay
 12 “these proceedings” for 30 days “to allow pro bono counsel time to file a petition for admission with
 13 the Court and if admitted to review the file and file whatever motion/pleadings that are appropriate
 14 with the Court.” *Id.* Defendant also states that she filed answers to four sets of questions she
 15 received via email from Plaintiff. *Id.* at 2, 4.

16 Plaintiff responded with a Motion to Strike Defendant’s request for a stay, arguing that the
 17 Motion was improperly filed and did not comply with local or federal procedural rules. ECF No.
 18 160. Defendant did not file a response.

19 **II. DISCUSSION**

20 **A. Plaintiff’s Motion to Strike is granted.**

21 Plaintiff asks the Court to strike Defendant’s motion for a stay. ECF No. 160. To date, no
 22 response to Plaintiff’s Motion to Strike has been filed and the time to do so has passed. Under LR
 23 7-2(d), the failure of an opposing party to file points and authorities in response to any motion, except
 24 a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to the granting
 25 of the motion. Plaintiff’s Motion to Strike may be granted on this basis alone.

26 Further, the Court has authority to strike an improper filing under its inherent power to
 27 control the docket. *E.g., Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010).
 28 “Striking material under the Court’s inherent power is wholly discretionary.” *Fed. Nat’l Mortg.*

1 *Assoc. v. Willis*, 2016 WL 11247554, at *1 (D. Nev. Oct. 14, 2016). In her Motion, Defendant fails
 2 to identify a valid reason she needs a stay to allow for identified counsel to enter an appearance in
 3 this case—something that counsel, if they meet the requirements for admission to this Court, can do
 4 at any point throughout these proceedings. Further, Defendant fails to identify what she seeks a stay
 5 from—the only active proceedings in this case arise from Plaintiff’s post-judgment discovery efforts,
 6 which Defendant has demonstrated she is capable of answering without the assistance of counsel.
 7 In short, Defendant’s Motion to Stay does not “state with particularity the grounds for seeking the
 8 order” or sufficiently “state the relief sought.” Fed. P. Civ. P. 7(b)(1)(B) & (C). The Court therefore
 9 exercises its discretion to strike Defendant’s Motion to Stay.

10 **B. Defendant shall respond to outstanding discovery within 30 days.**

11 In Defendant’s response to the Court’s March 23, 2021 Order to Show Cause, she indicates
 12 that she responded to some of Plaintiff’s discovery requests, including Plaintiff’s first and second
 13 sets of requests for admission and his second set of requests to produce. *See* ECF No. 157 at 2, 4.
 14 However, Plaintiff claims that Defendant has still not responded to his First Set of Interrogatories or
 15 First Set of Requests for Production. ECF No. 159 at 2.

16 Given Defendant’s partial compliance with the Court’s Order compelling discovery
 17 responses, the Court finds that civil contempt is not an appropriate remedy at this time. *See General*
 18 *Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986) (“[S]ubstantial compliance with
 19 a court order is a defense to an action for civil contempt.”). However, the Court orders Defendant
 20 to respond to Plaintiff’s First Set of Interrogatories and First Set of Requests for Production,
 21 contained in Plaintiff’s Motion to Compel (ECF No. 150 at 18–34), within 30 days. Defendant will
 22 be given no further extensions of time to complete this discovery.¹ If Defendant again fails to
 23 comply, the Court will hold Defendant in civil contempt, and may be required to pay a fine of up to
 24 \$100 per day for each day she remains noncompliant.

25
 26 ¹ The Court recognizes that Defendant seeks to have counsel appear in this case. If her pro bono attorney meets
 27 the requirements of admission to this Court, he or she can file an application to appear pursuant to LR IA 11-2 (as it
 28 appears the attorney who agreed to represent her in this matter practices out of state)—or file a notice of appearance if
 already admitted to this Court—at any time. The Court will not grant further extensions based on the Defendant’s
 representation status.

